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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHEMICAL
SUPPLIES (ICS), INC., a Delaware
corporation, and PETROVERDE
CARIBE, S.A., a Panamanian
Corporation,

Plaintiffs,

v.

RESTORATION ENERGY, LLC, a
limited liability company, SOUTHWEST
EOR OPERATING, LLC, a Texas
limited liability company; and DOES 1
through 10 inclusive,

Defendants.

No. 1:14-cv-01645-MCE-JLT

MEMORANDUM AND ORDER

Plaintiffs International Chemical Supplies (“ICS”) and Petroverde Caribe, S.A. (“Petroverde”) (collectively, “Plaintiffs”) allege several causes of action against Defendants Restoration Energy (“RELLC”) and Southwest EOR Operating (“SWEOR”) (collectively, “Defendants”) stemming from an alleged breach of contract. Currently before the Court is Defendants’ Motion to Dismiss (ECF No. 27), which seeks dismissal of the action on the grounds of forum non conveniens. For the reasons set forth below, Defendants’ Motion to Dismiss is GRANTED and this action is DISMISSED.¹

¹ Because oral argument would not have been of material assistance, the Court ordered this

1 **BACKGROUND²**

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3 Petroverde develops and produces environmentally friendly degreasers. In
4 January 2014, Petroverde and RELLC reached an oral agreement for the completion
5 and financing of a pre-production facility of a degreaser known as “ICS-0509.”

6 Petroverde and RELLC subsequently memorialized their agreement in a Memorandum
7 of Understanding (“MOU”).³

8 RELLC partnered with SWEOR to assist in securing the pre-production facility in
9 Bakersfield, California; Petroverde partnered with ICS to manufacture the degreaser and
10 to obtain a license to conduct business in California.⁴ ICS began producing the
11 degreaser at the Bakersfield facility on February 25, 2014. Between then and March 17,
12 2014, ICS produced approximately fifty totes of the degreaser on behalf of Petroverde.
13 On March 17, 2014, however, SWEOR, on its own behalf and as authorized by RELLC,
14 forcibly took control and locked Plaintiffs out of the Bakersfield production facility.
15 Defendants have refused to pay for forty-seven totes of finished product that remain at
16 the Bakersfield facility, and they have offered to sell the product to third parties without
17 compensating Plaintiffs.

18 Plaintiffs seek damages, declaratory relief, and injunctive relief on causes of
19 action for breach of contract, unjust enrichment, conversion, promissory estoppel, and
20 negligent misrepresentation. Defendants seek dismissal of the action on the grounds of
21 forum non conveniens because the forum selection clause in the MOU requires that
22 “[a]ny dispute arising under [the] Agreement will be resolved exclusively by submission
23 to the courts of the State of New York” MOU, ECF No. 28-1, ¶ 54.

24 ///

25 matter submitted on the briefs. E.D. Cal. Local R. 230(g).

26 ² The following statement of facts is based on the allegations in Plaintiffs’ Complaint (ECF No. 2).

27 ³ The MOU is attached as Exhibit A to the Declaration of Peter Schaefer (ECF No. 28).

28 ⁴ None of the parties have their principal place of business in California.

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STANDARD

“[T]he appropriate way to enforce a forum-selection clause pointing to a state or foreign forum is through the doctrine of forum non conveniens.” Atlantic Marine Const. Co., Inc. v. U.S. Dist. Ct. for W. Dist. of Tex., ___ U.S. ___, 134 S. Ct. 568, 580 (2013). Generally, when a defendant seeks dismissal of an action on grounds of forum non conveniens, the court must consider both private and public-interest factors. Id. at 581. However, when the defendant establishes that the parties agreed to a contractually valid forum-selection clause,⁵ a court should (1) give no weight to the plaintiff’s choice of forum, (2) not consider arguments about the parties’ private interests, and (3) “consider arguments about public-interest factors only.” Id. at 581-82.

“Public-interest factors may include the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; and the interest in having the trial of a diversity case in a forum that is at home with the law.” Id. at 581 n.6 (internal bracketing and quotation marks omitted). As the party defying the forum-selection clause, the plaintiff bears the burden of establishing that dismissal is unwarranted. Id. at 581.

ANALYSIS

A. Validity of the MOU

Plaintiffs do not dispute that the MOU contains a forum-selection clause that designates the New York state courts as the exclusive forum. Plaintiffs, however, contend that the MOU is unenforceable because it is merely “an agreement to agree” and because neither ICS nor SWEOR were parties to the MOU.

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⁵ “A forum selection clause is presumptively valid; the party seeking to avoid a forum selection clause bears a ‘heavy burden’ to establish a ground upon which [the court] will conclude the clause is unenforceable.” Doe 1 v. AOL LLC, 552 F.3d 1077, 1083 (9th Cir. 2009) (per curiam).

1 Although the MOU indicates that the parties contemplated a future finalized
2 agreement, the MOU also provides that it “shall be binding upon and inure to the benefit
3 of the Parties, and to each party’s successors, and permitted assigns.” MOU, ECF
4 No. 28-1, ¶ 57 (emphasis added); see also id. at ¶ 58 (“All parties acknowledge that a
5 facsimile copy of this Agreement may be executed and shall have the same binding
6 force and effect”). Additionally, although only the chief executive officers of Petroverde
7 and RELLC signed the MOU, Plaintiff’s factual allegations indicate that ICS and SWEOR
8 are sufficiently related to the contractual relationship to justify subjecting those parties to
9 the forum-selection clause. See Holland Am. Line, Inc. v. Wartsila N.A., Inc., 485 F.3d
10 450, 456 (9th Cir. 2007) (“The forum selection clauses apply equally to BVNA and BV
11 Canada because any transactions between those entities and Holland America took
12 place as part of the larger contractual relationship between Holland America and Bureau
13 Veritas.”); Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 514 n.5 (9th Cir. 1988)
14 (“We agree with the district court that the alleged conduct of the non-parties is so closely
15 related to the contractual relationship that the forum selection clause applies to all
16 defendants.”).

17 Accordingly, the MOU is enforceable as to both Defendants.

18 **B. Public-Interest Factors**

19 The public-interest factors weigh in favor of dismissing this action. As to
20 administrative difficulties flowing from court congestion, judges in the Eastern District of
21 California carry the heaviest caseloads in the nation. Although the parties have not
22 made any representations about the congestion of the New York state courts, this factor
23 likely favors dismissal.

24 As to the second public-interest factor identified in Atlantic Marine, there is little
25 local interest in this action. Although the pre-production facility is in the Eastern District
26 of California, all of the parties in this case have their principle place of business in a
27 foreign state or country. See Compl. at 2. Nevertheless, because this action would not
28 be any more of a local interest for the New York state courts, this factor is neutral.

1 The third public-interest factor identified in Atlantic Marine also favors dismissal of
2 this action. In addition to the forum-selection clause providing the New York state courts
3 as the mandatory forum, the MOU provides that “[t]his Agreement shall be governed by
4 and construed and interpreted in accordance with the laws of the State of New York.”
5 MOU, ECF No. 28-1, ¶ 54. The New York state courts are indisputably more “at home”
6 with New York state law than this Court. Accordingly, this factor favors dismissal.

7 Thus, one public-interest factor is neutral and the two other factors favor
8 dismissal. Because Plaintiffs have not established that the forum-selection clause in the
9 MOU is unenforceable or that dismissal is unwarranted, the Court must dismiss this
10 action.

11 12 CONCLUSION

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14 Accordingly, Defendants’ Motion to Dismiss (ECF No. 27) is GRANTED, and this
15 action is DISMISSED. The Clerk of the Court is directed to close this action.

16 IT IS SO ORDERED.

17 Dated: July 28, 2015

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21 MORRISON C. ENGLAND, JR., CHIEF JUDGE
22 UNITED STATES DISTRICT COURT
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